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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 674

VILLAGE OF RIDGEFIELD PARK, *et al.*,
Appellants,

vs.

BERGEN COUNTY BOARD OF TAXATION, *et al.*,
Appellees.

CONSOLIDATED WITH

CHARLES B. BLEASBY, County Treasurer of the County of Bergen,
Appellee,

vs.

HAROLD J. JONES, Collector-Treasurer, *et al.*,
Appellants.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS, BRIEF AND APPENDIX IN SUPPORT THEREOF

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On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS

Pursuant to Rule 16 (a) and (b) of this Court, the Attorney General of New Jersey[1] moves to dismiss on the grounds that:

[1] This motion is made by the Attorney General of New Jersey as attorney for appellees, the Bergen County Board of Taxation,

(Continued on following page)

(1) the appeal is not taken in conformity to the statute, 28 U.S.C. §1257, in that the mandate of the New Jersey Supreme Court sought to be reviewed is not a final judgment within the meaning of the statute, because (a) the *certiorari* portion of the case has been remanded to the trial court for a determination of the amount of credit, if any, Ridgefield Park should be allowed for the alleged overpayment of county taxes, (b) neither the trial court nor the Supreme Court of the State of New Jersey has passed upon the evidence or the standards of proof required for obtaining such credit or other matters that may be raised in the proceedings, and (c) the part of the action relating to *mandamus* is still in the trial court (a judgment or order has not yet been entered by the trial court on that portion of the case, and no party has had an opportunity to appeal from the trial court's decision);

(2) this appeal does not present a substantial federal question; and,

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(Continued from preceding page)

and its members, appellees, Louis A. D'Agosto, H. Lee Moss and Benjamin Green. In New Jersey, the County Boards of Taxation are represented by the Attorney General, inasmuch as the boards are deemed to be state agencies. *Warren* v. *Hudson County*, 135 N. J. L. 178, 180, 181 (E. & A. 1947); *Baldwin Construction Co.* v. *Essex County Bd. of Taxation*, 24 N. J. Super. 252, 261 (Law Div. 1952), also 27 N. J. Super. 240, 242 (App. Div. 1953), 28 N. J. Super. 110 (App. Div. 1953), 32 N. J. Super. 18 (Law Div. 1954) and 16 N. J. 329 (1954). The County Board of Taxation and its members are not parties to *Bleasby* v. *Jones*, hereinafter referred to as the *Bleasby* action, which has been consolidated with the *Ridgefield Park* action herein. However, the position asserted on this motion is applicable to both actions. Where the validity of a state statute or a constitutional provision is drawn in question in any action to which the State of New Jersey or an officer or agency thereof is not a party, notice is required to be given to the Attorney General and he may be permitted to intervene in the action on behalf of the State. R.R. 4:37-2.

(3) the judgment below rests upon an adequate non-federal basis, namely, that appellants have failed to pursue adequate administrative remedies available in New Jersey for review of the 1959 Equalization Table relating to real property valuations in Ridgefield Park, and with respect to the county tax apportionment.

Opinions Below

A. The *Ridgefield Park* action.

The first opinion of the Supreme Court of New Jersey in *Ridgefield Park* v. *Bergen County Board of Taxation*, hereinafter referred to as the *Ridgefield Park* action, was rendered on January 25, 1960 and is reported in 31 N. J. 420 (Appellants' Appendix A, 1a). The Supreme Court remanded the action to the Law Division of the Superior Court of New Jersey where it was tried without a jury between February 29, 1960 and March 28, 1960.

After the trial, the lower court filed two opinions, each dealing with a different aspect of the action. The first opinion was rendered on April 12, 1960 and is reported at 61 N. J. Super. 170 (Appellants' Appendix B, 26a). This opinion deals with the *certiorari* part of the action—the validity of the county tax apportioned to Ridgefield Park for the year 1959. Pursuant to the opinion, judgment was entered on April 29, 1960 (Appellants' Appendix B, 90a), which, among other things, adjudged that the apportionment of county taxes for the year 1959 to Ridgefield Park was void. The judgment ordered the County Treasurer, Charles B. Bleasby, to refund to Ridgefield Park the full amount of its share of county taxes. From this judgment a second appeal was taken to the Supreme Court of New Jersey on petition for certification granted by that court, 33 N. J. 113 (1960). The opinion of the Supreme Court on this second appeal (Appellants' Appendix A, 12a) was rendered on June 28, 1960 and is reported at 33 N. J. 262. Pursuant to this opinion, a mandate was issued by the

Supreme Court (Appellants' Appendix A, 17a) reversing and settting aside the judgment of the Superior Court, Law Division, and remanding the case to the trial court for proceedings consistent with the opinion. From this mandate of the New Jersey Supreme Court appellants have filed this appeal.

The second opinion of the trial court in the *Ridgefield Park* action was rendered on June 7, 1960, dealing with the *mandamus* part of the action. This opinion is reported at 62 N. J. Super. 133 (Appellants' Appendix B, 77a). No judgment has been entered on the *mandamus* portion of the case and it remains in the trial court.

B. The *Bleasby* action.

In *Bleasby* v. *Jones*, hereinafter referred to as the *Bleasby* action, the same trial court (Superior Court of New Jersey, Law Division) rendered an opinion on October 9, 1959, reported at 57 N. J. Super. 316 (Appellants' Appendix B, 18a). On February 15, 1960, the Supreme Court of New Jersey simultaneously granted certification and remanded the cause to the Law Division for further proceedings (31 N. J. 552) in the light of the first opinion of the Supreme Court in the *Ridgefield Park* action rendered on January 25, 1960. The trial court thereafter entered an order on May 23, 1960 (Appellants' Appendix B, 92a) consolidating the *Bleasby* case with the *Ridgefield Park* case, dismissing the complaint of the County Treasurer and entering judgment on the counterclaim in that action by which judgment the trial court set aside the county taxes apportioned to Ridgefield Park for 1959. The judgment was entered in the *Bleasby* case by the trial court in accordance with the trial court's opinion in the *Ridgefield Park* case, rendered on April 12, 1960 and referred to above. The opinion and mandate of the Supreme Court in the *Ridgefield Park* case rendered on June 28, 1960, from which this appeal has been taken, was also made controlling in the *Bleasby* case, 33 N. J. at 266 (Appellants' Appendix A, 16a).

BRIEF IN SUPPORT OF MOTION

Questions Presented

1. Should the appeal be dismissed for lack of finality in that the mandate of the Supreme Court of New Jersey remanded the action to the trial court to determine what tax credit, if any, may be allowed Ridgefield Park for its alleged overpayment in 1959 county taxes?

2. Do appellants raise a substantial federal question when they demand a total abatement of the county tax share apportioned to Ridgefield Park because of the undervaluation of personal property assessments in other municipalities in the county and because of the alleged error in the equalization ratio applied to real property aggregate assessments?

3. Does the judgment below rest upon an adequate non-federal basis, namely, the failure of appellants to exhaust available administrative remedies?

Statutes Involved

The statutes involved are various sections of New Jersey statutes dealing with the assessment and taxation of taxable property, in Title 54 of the New Jersey Statutes Annotated, particularly as such statutes relate to the apportionment of the county tax burden among municipalities within a county. The statutes referred to herein are those which were in effect for the year 1959. A substantial revision of these statutes has been made by the New Jersey Legislature. Laws of New Jersey 1960, Chapter 51. The assessment of property and the apportionment of county

taxes based upon this new law will go into effect for the 1962 tax year.[2]

Statement

A. The Tax Background.

New Jersey is known as a property tax state. It has no general income tax or sales tax. However, the property tax is essentially a local government tax as distinguished from a tax of the state government.[3]

The tax involved in this action is the local property tax. In each tax year (the calendar year) this tax is levied against real property and tangible personal property in each municipality to raise funds for local government costs —the costs of municipal and county government. None of these revenues are paid to the state government.

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[2] Under the new assessment law tangible personal property will no longer be assessed in accordance with "market value", but will be assessed at "net book value". L. 1960, c. 51, §5. This change will eliminate the difficulties in the property tax law in accurately valuing manifold types of personal property and in equalizing or correcting the assessed valuations of personal property where they are incorrect. The principal contention on this appeal is based upon the failure to "equalize" personal property assessments in the process of apportioning the county tax burden. With the use of book value as the basis for assessing tangible personal property, the problems of valuation and equalization will no longer exist. Household goods may be entirely exempt from taxation at the option of each municipality. If not exempted in all municipalities, however, assessments on household goods will no longer be considered in apportioning the county tax burden. It is expressly provided that household goods shall not be included in the valuation for computing the county tax apportionment. L. 1960, c. 51, §13(a).

[3] The governmental divisions in New Jersey are the state government, county governments and municipal governments in the 21 counties. The principal sources of state government revenue are motor fuel taxes, motor vehicle registration fees, corporation, cigarette, beverage and inheritance taxes, and the like. These revenues are used for state government purposes and for local aid, such as school aid, allotted to local governments.

Each municipality is a taxing district and has its own assessor or Board of Assessors. The total amount of taxes to be raised in each municipality in the tax year depends upon the budget for municipal government and local school costs and the budget for county government costs. The municipal assessors assess and the municipalities tax real and tangible personal property located within their respective borders. The tax is paid to the municipal tax collector. A portion of the total amount of taxes so raised is then paid over to the County Treasurer, and this portion represents the municipality's contribution toward the cost of county government. R.S. 54:4-74. There is no "County Tax" as such. No county officers assess or collect taxes.

Beginning on October 1st of the pre-tax year, the municipal assessor lists and assesses all the taxable real property and all the taxable tangible personal property located in his municipality. These assessments are called "individual assessments", or "line items" and appear in the tax lists and duplicates filed with the County Board of Taxation on January 10th in each tax year. N.J.S.A. 54:4-1 (Appellants' Appendix D, 102a) and N.J.S.A. 54:4-35.

Assesssments must be made at "true value," N.J.S.A. 54:4-1. The New Jersey Constitution (*Constitution of* 1947, *Article* VIII, *Section* 1, *paragraph* 1) requires that: "Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value; and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district."

See: *Ridgefield Park* case, *supra*, 31 N. J. at 425, 426 (Appellant's Appendix A, 2a to 3a); *Switz v. Middletown Township*, 23 N. J. 580 (1957).

Notwithstanding the constitutional provisions for uniformity in assessment and tax treatment, and the statutory requirement of assessment at full value, assessments throughout the state were generally made at varying levels below true value for many years. Because the failure to assess at full true value has been an acknowledged practice of long-standing, the New Jersey Legislature provided an equalization process to adjust real property aggregate valuations for use in apportioning county taxes. The "aggregate" assessed valuation is the sum of individual assessments in the taxing district. Following the submission of the tax lists and duplicates to the County Boards of Taxation on January 10th in the tax year, the County Boards then proceed to "equalize" the aggregate real property assessments in each municipality. R.S. 54:3-17 to 19.

The equalization process will be described briefly. Under R.S. 54:3-17, the County Board determines the "percentage of full value at which the real property of each taxing district is assessed according to the tax lists laid before the board." It prepares an equalization table showing aggregate real property assessments in each municipality, the ratio by which the assessed valuations should be increased to correspond to true value, and the "true value" thereby determined.

On January 25th in each tax year the County Board meets and holds a hearing on the equalization table, making such adjustments in the ratios or valuations as prove necessary. The hearings may be adjourned from time to time, but the equalization process must be completed by March 10th. R.S. 54:3-18. The equalization table is then confirmed by the County Board. The real property valuations as equalized are then used in apportioning county taxes due from each municipality. R.S. 54:3-19.

County officers notify the County Board of the amount of money required each year for county government pur-

poses. The County Board apportions the county taxes according to the value of ratables in each municipality." N.J. S.A. 54:4-41.

In apportioning the county tax, the County Board totals the value of all taxable property in each municipality and allocates the tax in the proportion that the total valuations of each municipality bear to the total valuations of all property in the county. For this process the County Board uses the aggregate valuations of real property, *as equalized*, and adds to it the aggregate valuations of personal property, *as assessed*, together with assessments on other taxable property, such as Class II railroad property, in each municipality. Adjustments are made for exemptions, credits resulting from tax appeals, and the like. (*See*: N.J.S.A. 54:4-52, requiring the County Board to fill out, on or before April 10th, a table of aggregates showing these figures. The table of aggregates is also commonly known as the abstract of ratables.)

The share of county taxes apportioned to each municipality is computed as follows:

$$\text{Total County Tax Burden} \times \frac{\text{Total Valuations in the Municipality}}{\text{Total Valuations of all Property in the County}}$$

The tax rate of a municipality is then computed as follows: The total amount of revenue to be raised is the sum of the municipality's share of the county tax burden, plus the amount required for municipal government purposes. The total revenue needed is divided by the total value of property in the municipality, *as assessed*. If $1,000,000 must be raised for county and municipal needs and the assessed valuation of all property in the municipality is $10,000,000, the tax rate would be $1.00 per $10.00 of assessed valuation (or $100 per $1,000 of assessed valuation.)

Exact equality in the apportionment of the county tax burden among the municipalities is not achieved. *Totowa v. Passaic County Board of Taxation*, 5 N. J. 454, 464 (1950); *Passaic v. Passaic County Board of Taxation*, 18 N. J. 371, 380, 381 (1955); *Passaic v. Passaic County Board of Taxation*, 31 N. J. 413, 419 (1960) (Appellant's Appendix C, 94a). But the Supreme Court of New Jersey has uniformly upheld the apportionment method prescribed by the Legislature against the charge of unconstitutionality. In the recent *Passaic* case, 31 N. J. at 418, 419 (Appellants' Appendix D, 98 to 99a) the court expressly held that:

> "Under existing circumstances, there is nothing arbitrary or invidious in providing for equalization of the aggregates of real property while omitting similar treatment of the aggregates of personal property. * *
>
> "What we have just said disposes of any conceivable constitutional objection. The Legislature need not refrain from achieving a measure of equality where it can merely because its technique is not serviceable throughout the apportionment basis. Absolute equality in taxation is a practical impossibility."

In the 1955 *Passaic* case, 18 N. J. 371, Mr. Justice Brennan thoroughly analyzed the subject of apportioning county taxes in New Jersey. Writing for the Court, he said, at 380:

> "But the aggregates which are equalized in the apportioning of county taxes (presently there are no state or state school taxes raised from assessments of property) are only the aggregates of assessments against real estate. The process does not draw in the assessments or the aggregates thereof against personal property or second-class railroad property. * * * We thus are not concerned in this case with the remedies of individual taxpayers from discriminatory assessment of their property, a matter dealt with in *Baldwin Construction Co. v. Essex County Board of Taxation*, 16 N. J. 329 (1954).

> "Imperfect as equalization of aggregates of real estate assessments is, the county and state agencies have the duty so to administer the equalization of aggregates process as best to secure the fair distribution of tax burdens common to municipalities * * *."

Quoting from the *Totowa* case, *supra*, Mr. Justice BRENNAN repeats that:

> "'It is well recognized that absolute equality in taxation is a practical impossibility and that the Legislature in setting up tax procedures is not held to a standard of perfection.' (At 381)

Beginning in 1952, the courts of New Jersey have vigorously pursued the ideal of equality and uniformity in tax assessment and in the distribution of tax burdens. The *Baldwin* case, *supra*, fn. 1 held that individual taxpayers who were visited with discriminatory assessments burdens could obtain relief in New Jersey courts by a reduction in assessments and were not remitted to the remedy of seeking an upward revision of all other assessments in the taxing district to true value. The "upward revision" doctrine of *Royal Mfg. Co.* v. *Board of Equalization of Taxes*, 76 N. J. L. 402 (Sup. Ct. 1908), aff'd 78 N. J. L. 337 (E. & A. 1909) was condemned by the United States Supreme Court in *Hillsborough Township* v. *Cromwell*, 326 U. S. 620 (1946) and was disavowed by the New Jersey Supreme Court in the *Baldwin* case, *supra*. *See*: *Gibraltar Corrugated Paper Co.* v. *North Bergen Tp.*, 20 N. J. 213, 219 (1955). The *Gibraltar* case held that relief through reduction of an assessment must also be afforded in the tax tribunals, tax administrative agencies of the State, though assessing below true value is contrary to the statutory standard.

Mr. Justice BRENNAN wrote a concurring opinion, in *Gibraltar*, 20 N. J. at 223. In that opinion, at 226, he issued "a reminder to citizens and taxpayers generally" that if assessing authorities continue to make assessments at less

than true value, taxpayers "have it within their power to force the hands of assessing officials through a proceeding in lieu of prerogative writ or other appropriate action looking to a court order compelling their compliance. There is ample time for such a proceeding before the duplicates become final on May 1, 1956."

Mrs. Olivia Switz of Monmouth County accepted this invitation. *Switz* case, *supra*. The case was decided in the Appellate Division in 1956, 40 N. J. Super. 217, and by the Supreme Court in early 1957. There an order was entered compelling the assessor of Middletown Township to make all assessments uniformly at true value. Recognizing the need for a complete program of revaluation to accomplish this end, the court made the mandate effective for the tax year of 1959 (23 N. J. at 598), affording a two year period for the work to be accomplished.

The most recent advance in affording a remedy against discriminatory assessments has been made in *In re Appeals of Kents 2121 Atlantic Ave., Inc.*, 34 N. J. 21 (1961). There the Supreme Court held that a taxpayer who is assessed below true value, but is assessed nevertheless at a level that is higher than the average level of assessment in a taxing district (where a *common* ratio of assessment has not been established) may obtain a reduction to the *average* ratio of the district.

B. The Apportionment of the Bergen County Tax Burden in 1959.

Following the *Switz* case, Ridgefield Park conducted a revaluation program. Many other municipalities in Bergen County as well as in other counties in the state have completed revaluations. But, unlike Ridgefield Park, the other municipalities in Bergen County did not bring their assessments to full true value in 1959.

In the trial below appellants called as their own witnesses the assessors of each municipality in Bergen County. The

assessors testified that they assess taxable property, both real and personal, at varying levels below true value. Many of the assessors testified that they assessed property uniformly at a common ratio, at a common level below true value, thus achieving intra-municipal equality among the taxpayers of those municipalities.

The 1959 Abstract of Ratables (Table of Aggregates, N.J.S.A. 54:4-52) shows Ridgefield Park real property aggregate assessments of over $57,000,000 and personal property aggregate assessments of over $8,000,000, making a total valuation upon which county taxes were apportioned of over $65,000,000. The total county aggregate valuation was over $4,250,000,000. (Before equalization of real property aggregates, total real property assessments in Bergen County for 1959 were over $1,000,000,000. After equalization, real property aggregate valuations were over $4,140,000,000, showing an increase through the real property equalization process of over $3,140,000,000. Total tangible personal property assessments in Bergen County were $135,800,000, exclusive of assessments on household goods and effects of over $18,000,000.)[4]

Total taxes raised for county government purposes in 1959 were approximately $12,500,000.[5] Ridgefield Park's share of the county tax burden is determined by the amount that its aggregate assessments of over $65,000,000 bears to the aggregate "equalized" valuations in the county at large, over $4,250,000,000. The total county tax burden thus apportioned to Ridgefield Park was $192,153.05.

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[4] The head of each household received an exemption of $100 against the assessment for household goods and effects. N.J.S.A. 54:4-3.16.

[5] Total municipal and school district costs in 1959 in the 70 municipalities of Bergen County were approximately $83,800,000 exclusive of the cost of county government.

Ridgefield Park contends that if personal property assessments in other municipalities had been made in the first instance at true value, or had been equalized to full value, the total of assessments in the county would have increased, thereby decreasing Ridgefield Park's share of the county tax burden. This is a mathematical truth.

During the trial, total tax ratables were recomputed based upon testimony of the assessors. As indicated above, for the purpose of apportioning county taxes, real property aggregates had been equalized to true value. From the assessors' testimony, adjustments were made to "equalize" personal property aggregate assessments to true value. For example, if an assessor testified that he assessed personal property at 10% of true value, the aggregate personal property assessment in his municipality was multiplied by 10 to obtain the "equalized" aggregate.[6]

With personal property aggregates equalized on the basis of the assessors' testimony, a new county apportionment was made and placed in evidence at the trial. By this method it was demonstrated, and so found by the trial court, that Ridgefield Park's overpayment of 1959 county taxes resulting from the improper county-wide assessment

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[6] No adjustments were made in the assessments of household goods and effects. It was recognized by all parties that assessing household goods and effects accurately is an impossible task for all practical purposes. After the revaluation study was completed in Ridgefield Park, assessments on household goods and effects were uniformly fixed at $100 per room, regardless of the owner's economic status, regardless of the contents of the room and regardless of the neighborhood. Against this assessment the $100 exemption was applied. The net assessment against household goods and effects in Ridgefield Park in the main ranged between $300 and $500. In the court below, Ridgefield Park contended that this represented the true market value of such property. During the trial the assessor of Ridgefield Park testified that he knew of no person in the entire municipality who owned a diamond ring worth $1,000 or more.

of personal property was $15,653.94 (Appellants' Appendix B, 66a). The overpayment attributed to an improper equalization ratio for the real property of Ridgefield Park was estimated at $10,000 to $11,000 (Appellants' Appendix B, 69a). But the trial court did not favor appellants with a judgment in these amounts.

After the trial court's opinion was rendered appellants asserted for the first time the legal proposition that they have a constitutional right to set aside in its entirety the county tax burden apportioned to Ridgefield Park because of the failure to assess personal property in other municipalities at true value and the failure to somehow equalize those assessments to true value. This is a novel doctrine that has no support in any of the cases cited by appellants, nor in any cases known to exist. Appellants are apparently dissatisfied with their own proof. They are not satisfied with a remedy whereby a credit will be given to the Ridgefield Park for the claimed overpayment. Originally, however, plaintiffs themselves did not claim the right to be free from all county taxes. This right was asserted for the first time by appellants after the trial and after the trial court wrote its opinion.

The demand for relief in appellants' complaint did not seek a refund of the entire share of county taxes.[7] Paragraph (b) of the demand for relief requested that the County Treasurer "be restrained from collecting from the Vil-

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[7] Appellant's complaint demanded the following judgment:

"(a) That the defendant, the County Board of Taxation, be commanded and directed in certifying the assessment lists of both real and personal property in the year 1959 and subsequent years thereafter to direct and determine that all real and personal property within the County subject to taxation by the defendant, the County of Bergen, shall be at true value of such real and personal property by uniform rules and according to the same standard of value in compliance with the mandates and requirements of the Constitution and Statutes of this State;

(Continued on following page)

lage of Ridgefield Park any moneys in excess of the Village's fair share of County taxes based upon full and fair value assessments of all real and personal property at true value in all taxing districts within said County * * *."

Paragraph VII of the pretrial order states that:

> "Plaintiffs also seek an injunction restraining the * * * treasurer of Bergen County from collecting any taxes from Ridgefield Park except such amount as would be plaintiffs' fair and just share after an equalization of the assessments on real and personal property as required by law."

The pretrial order was expressly made binding on all parties unless amended by motion brought on before May 29, 1959. This pretrial order is entered pursuant to the revised court rules, R.R. 4:29.[8]

(Continued from preceding page)

"(b) That the defendants, the County of Bergen and the Treasurer of said County, be restrained from collecting from the Village of Ridgefield Park any monies *in excess of said Village's fair share of County taxes* based upon full and fair value assessments of all real and personal property at true value in all taxing districts within said County; and

"(c) That the defendant assessors of the various taxing districts within the County be commanded and directed to assess all real and personal property within their taxing districts immediately, at true and fair value, both personal and real, and to amend at the earliest practical date their assessment rolls for the year 1959; and

"(d) Costs of this suit." (Emphasis added.)

[8] Thus, on non-federal grounds alone, appellants may be barred from a refund of the full county tax payment. We urged this ground in the court below, namely, that appellants could not be awarded a full refund of county taxes since they sought only a refund of the excessive portion. We relied upon the demand in the complaint and the pre-trial order.

Despite the demand in the complaint and the pretrial order, limiting appellants' claim to that portion of the County tax allotment which was in excess of what appellants contend the proper allotment should be, the trial court ordered a full refund of the County tax paid by Ridgefield Park in 1959. The New Jersey Supreme Court reversed. The Supreme Court remanded the action to the trial court for a determination of such credit as Ridgefield Park may claim only as to the portion of its County tax allotment "in excess of the share which it would have owed if the statutory provisions had been honored by the local assessors within the county" (Appellants' Appendix A, 15a). Without taking further steps in the trial court, without seeking to have the trial court assess the amount of the alleged overcharge, appellants have taken this appeal.

Summary of Argument

Appellants complain of the apportionment of county taxes in Bergen County for the tax year of 1959. They contend that an excessive portion of the county tax burden was allocated to Ridgefield Park. Appellants assign two reasons for the overcharge. Firstly, appellants say that in making the apportionment the County Board of Taxation had incorrectly "equalized" *real* property aggregate valuations in Ridgefield Park. Secondly, they say that an incorrect total of *personal* property valuations in the county was used in making the apportionment. The error of which Ridgefield Park complains with regard to personal property valuations is that Ridgefield Park allegedly assessed personal property at true value while other municipalities assessed personal property at varying levels below true value, and, that, in the computation of the total assessed valuations in the county, no effort was made to equalize or adjust the undervalued personal property valuations to reflect true value.

The complaint about the real property valuations involves no federal question. Ridgefield Park contends that real property assessed valuations in other municipalities were "equalized" or adjusted to true value on the basis of sales-ratio studies made by state officials. These studies compare the selling price of a property with the assessed value of the property in the year of the sale. An average of sales-ratios is derived and is used to "equalize" the total of real property assessments. Ridgefield Park contends, however, that after its revaluation of property at 100% of true value, the Bergen County Board of Taxation disregarded the sales studies, which showed an assessment ratio of 107%, and accepted Ridgefield Park's real property assessments as representing true value. The equalization ratio was set at 100% for Ridgefield Park. The evidence to support this action of the County Board of Taxation was presented by Ridgefield Park itself at the Equalization Table hearings conducted by the Board in early 1959. At these hearings Ridgefield Park contended that it had accurately assessed all real property at 100% of true value. Its expert witness testified that his sampling of sales-ratio data showed a range of 97% to 101%. The County Board accepted this evidence and fixed the ratio at 100%. There was an adequate basis in the evidence for this determination, notwithstanding the use of sales-ratio evidence in fixing equalization ratios of all other municipalities that had not currently revalued their properties at full, true value. The County Board transgressed no federal right in performing its equalization functions.

In any case, this complaint could have been reviewed in a state administrative tribunal, namely, the Division of Tax Appeals. No such review was sought by Ridgefield Park. The Supreme Court of New Jersey specifically held, in 33 N. J. at 266, that "the equalization table for 1959 and the apportionment of the county tax for that year could be reviewed as such only in the administrative process * * *."

Thus, with respect to the complaint concerning the equalization of real property aggregate valuations, the Supreme Court of New Jersey has decided the case on an adequate, independent, non-federal ground, namely, the failure to exhaust an available and adequate administrative remedy.

The real basis for this appeal relates to the treatment of personal property. Ridgefield Park contends that it assessed personal property at 100% of true value in 1959, that other municipalities under-assessed personal property in their districts and that the failure to adjust such valuations to reflect full true value imposed an excessive portion of county taxes upon Ridgefield Park. In its complaint, and in the trial court's pre-trial order governing this action, Ridgefield Park sought to be excused from paying only that portion of county taxes which was found to be excessive. The Supreme Court of New Jersey, in its first opinion (31 N. J. 420, at 428; Appellants' Appendix A, 5a) held that the apportionment of county taxes for 1959 could not be set aside in its entirety, "where the properties are lawfully taxable and the infirmity is claimed to reside in the valuation process." The Court stated that "the question of a subsequent credit either under statute or judicial principle is of course another matter."

Notwithstanding the Supreme Court's opinion, and the fact that Ridgefield Park brought suit to be relieved of the portion of county taxes which was found to be excessive, not its entire share of the 1959 county tax burden, the trial court subsequently held that the constitutional requirement of equal treatment had been violated, that the county tax as related to Ridgefield Park was unconstitutional and void and that Ridgefield Park was therefore entitled to recover the entire share of county taxes which it had paid for that year. In other words, because Ridgefield Park had assessed property at true value while other municipalities had under-assessed their taxable properties, Ridgefield Park was

excused from all county taxes for that year. This result was achieved by the trial court notwithstanding that some portion of the county tax burden should properly have been paid by Ridgefield Park.

The Supreme Court promptly reversed this decision of the trial court. 33 N. J. 262 (1960) (Appellants' Appendix A, 12a).

We note that the trial court did not follow the law of the case established by the Supreme Court in its first decision rendered on January 25, 1960. In fact, in its opinion of April 12, 1960, comprising 51 pages in Appellants' Appendix B, 26a to 76a, inclusive, the trial court did not mention the opinion of the Supreme Court in the same matter rendered three months earlier.

The tax statutes of New Jersey are constitutional under the Federal and State Constitutions. They require the assessment of all taxable property uniformly at true value. However, assessors have frequently failed to comply with the valuation standards of the statute, both as to real and personal property.

For purposes of apportioning the county tax burden, the New Jersey legislature has provided an equalization procedure by an administrative agency, the County Boards of Taxation, to correct the errors in valuation of real property. But the difficulties in assessing personal property and the lack of a feasible administrative method for equalizing or adjusting personal property on a mass, county-wide scale have prevented the legislature from providing an administrative corrective for personal property valuations. County taxes, therefore, are apportioned on the basis of real property, adjusted to reflect full true value, plus personal property, as assessed, without adjustment. The portion of county taxes allocated to a municipality is based upon its aggregate assessed valuations of real property, equalized, plus personal property, as

assessed, compared with the aggregate valuations of taxable property in the county as a whole, including real property, equalized, and personal property, as assessed.

Appellants contend that this basis of apportionment is unconstitutional. Although recognizing some inexactness in the apportionment, and the shortcomings in the valuation of personal property, appellees contend that the method of apportionment is reasonable and does not offend the federal Constitution. Appellees further contend, however, that Ridgefield Park has no federal right to be entirely excused from the payment of county taxes. The only remedy, if any, Ridgefield Park can claim is to have its county tax burden corrected to eliminate any overpayment due to inexactness in the apportionment process.

The Supreme Court of New Jersey has remanded the action to the Law Division for a determination of the credit that may be allowed for the alleged overpayment in county taxes. Although this issue has not been resolved, either in the trial court or the Supreme Court, Ridgefield Park has not availed itself of the opportunity for further proceedings in the New Jersey courts. It has filed this appeal instead, seeking to avoid all county taxes for 1959.

We contend that the judgment below is not a final judgment. Ridgefield Park contends that it has "an insurmountable burden of proof" to establish the amount of its overpayment (Jurisdictional Statement, page 22). But the burden of proof has not yet been passed upon by the trial court. The trial court reviewed the evidence introduced by appellants showing that Ridgefield Park had overpaid $15,653.94 in its share of county taxes because of underassessed personalty in other municipalities (Appellants' Appendix B, 66a). But the trial court was of the view that it had no power to grant an adjustment or credit to Ridgefield Park. This want of judicial power to grant a credit or to correct a county tax apportionment was clearly ex-

pressed by the trial court during argument on the motion to settle the form of order following the trial court's opinion. The burden of proof, therefore, was never passed upon by the trial court, nor by the Supreme Court. The Supreme Court has indicated in 33 N. J. at 266 that the appropriate remedy is by way of a credit for the alleged overcharge. The Court also said (Appellants' Appendix A, 15a, 16a):

> "We are not unmindful of the problems of proof in demonstrating the amount of the claimed excess, but the answer lies in a common sense approach to the sufficiency of the required showing, and not in a destruction of tax revenues."

Neither the trial court nor the Supreme Court has passed upon the sufficiency of proof or the propriety of the method used in fixing the overcharge at $15,653.94.

Appellees therefore contend that the judgment below is not final and the case has not concluded. (The part of the case dealing with an order of *mandamus* to compel proper assessments in the future has never left the trial court. The trial court has, in fact, deferred the entry of an order or judgment on this part of the case notwithstanding its opinion of June 7, 1960 (Appellants' Appendix B, 77a).) Moreover, we know of no federal right to have one's taxes vacated entirely because of the undervaluation of other property sharing the tax burden. The federal rule may require an increase in the tax imposed upon the undervalued property or a decrease in the tax imposed upon the fully valued property, but in no case has the tax been set aside in its entirety. See: *Iowa-DesMoines National Bank* v. *Bennett*, 284 U. S. 239, 247 (1931) where Mr. Justice BRANDEIS, speaking for the court, said: "The right invoked is that to equal treatment; and such treatment will be attained if either their competitors' taxes are increased or their own reduced."

Thus, we contend that no substantial federal constitutional right has been violated by the decision of the Supreme Court of New Jersey. We contend that the tax system of New Jersey does not offend the federal constitution since a reasonable mode is employed in the apportionment of county taxes. In any case, if the federal constitution requires a remedy for the distortion in the distribution of county taxes resulting from variations in the assessment of personal property, the Supreme Court of New Jersey has indicated its willingness to afford an adequate remedy to appellants, a remedy sufficient under federal law. At the most appellants would have a right to an adjustment of the tax allocation. Appellants have no federal right to be entirely excused from paying a share of the county tax because of the undervaluation of personal property assessments in other municipalities.

ARGUMENT

POINT I

The appeal should be dismissed for lack of jurisdiction where the judgment below is not a final judgment.

Appellants invoke the jurisdiction of this Court under 28 U.S.C. §1257(2) which provides as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

In *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 67 to 69 (1947), the court dismissed the appeal for lack of

finality where the order sought to be reviewed terminated "some but not all issues" in the proceeding. Republic Natural Gas was ordered to take gas from the Peerless well, but Republic had several alternatives. The matter was left open for later determination, in the event of the failure to reach agreement on the terms under which Republic must take the gas, the rates to be paid and other matters. Thus, what remained undetermined were matters not simply "ministerial" in nature. The judgment was deemed not final or ripe for review. Mr. Justice FRANKFURTER observed, at 68:

> "Thus, the requirement of finality has not been met merely because the major issues in a case have been decided and only a few loose ends remain to be tied up—for example, where liability has been determined and all that needs to be adjudicated is the amount of damages. *Bruce* v. *Tobin*, 245 U. S. 18; *Martinez* v. *International Banking Corp.*, 220 U. S. 214, 223; *Mississippi Central R. Co.* v. *Smith*, 295 U. S. 718."

In *Meagher* v. *Minnesota Thresher Mfg. Co.*, 145 U. S. 608, 611 (1892) the court dismissed an appeal for lack of finality of the judgment below because the judgment merely affirmed an interlocutory order which, although apparently decisive on the merits, resulted in a remand for further proceedings. Also, the action was apparently not complete as to all of the parties.

In the case at hand the trial court elected, for reasons of its own, to divide the action into two parts. On April 12, 1960 the trial court rendered a lengthy opinion on the *certiorari* part of the case. An appeal was immediately taken to the New Jersey Supreme Court on the grounds that the trial court's decision wholly disregarded the law of the case delineated by the New Jersey Supreme Court in its first opinion.

While this second appeal was pending in the State Supreme Court, and shortly before oral argument on June 13, 1960, the trial court, on June 7, 1960, entered a decision on the *mandamus* portion of the case. The trial court indicated its intention to enter a judgment ordering the Bergen County Board of Taxation "to equalize and assess the value of all taxable real and personal property of Bergen County on the basis of its true value * * *" (Appellants' Appendix B, 89a). The Attorney General contends that such an order is beyond the powers of the trial court and is contrary to the form of relief prescribed by the Supreme Court in its first opinion. The Attorney General appeared before the trial court for the purpose of having a judgment entered on the *mandamus* portion of the action. But at that time the State Supreme Court had not yet rendered its decision on the second appeal, dealing with the *certiorari* part of the case. In addition, the new tax law, Chapter 51 of the Laws of 1960, had been enacted and approved on June 15, 1960. Therefore, the trial court deferred the entry of a judgment on the *mandamus* part of the case pending other developments. And the judgment has not yet been entered. However, if a judgment is entered against the Bergen County Board of Taxation, as was indicated in the trial court's opinion, the Attorney General intends to appeal. Such an order may raise federal constitutional questions. On the other hand, appellants may contend that the failure to enter such an order will offend their federal constitutional rights and may desire to appeal and seek a review before this Court on that part of the case.

Moreover, there are still unresolved issues in the *certiorari* part of the case. We do not know whether any damages will be awarded on the basis of the proof submitted by appellants during the trial. We do not know what standard of proof will be applied to that evidence. We do not know whether appellants will claim that the remedy afforded, in terms of the standard of proof applied, violates

their federal constitutional rights. Nor do we know what effect will be given to Ridgefield Park's failure to assess household goods and personal effects in good faith at full true value. Will the adjustment claimed by Ridgefield Park be allowed without attempting to equalize at "true value" assessments on household goods and effects in the various municipalities, because Ridgefield Park did not assess such property at true value? Does this not prefer residential communities to some extent in the apportionment of the county tax? In the formula used at the trial, all commercial and industrial property assessments were brought to "full value," but household goods and effects assessments were unchanged. Can an adjustment be properly made without also attempting to bring household goods and effects to true value?

Perhaps Ridgefield Park will be awarded more than the $15,000 estimated as its overpayment on the formula used at the trial. A higher award may satisfy the new governing body of Ridgefield Park. Although the other municipalities may feel that such an award is excessive, when divided among the 70 municipalities in the county the *pro rata* share may be so small that it will be ignored and no further proceedings taken.

There has been much activity in this case. All assessors in the 70 municipalities of Bergen County were made parties defendant. But despite the two appeals to the New Jersey Supreme Court, the evidence introduced during the month of trial has not yet been brought before that court. No one has yet ruled on the sufficiency of proof to support a credit in favor of Ridgefield Park. The trial court or the Supreme Court of New Jersey may dispose of the case on the evidence—on insufficiency of proof—on an adequate and independent non-federal ground. For these reasons we must respectfully submit that the case is not ripe for determination by the United States Supreme Court.

POINT II

This appeal does not raise a substantial federal question because a reasonable mode has been employed in apportioning the county tax burden.

A. As to the Real Property Equalization Table.

In the Appendix annexed hereto we have set forth excerpts from the hearing on the 1959 equalization table held before the Bergen County Board of Taxation held on February 18, 1959. New Jersey statutes require a hearing before the county boards of taxation for the purpose of equalizing assessments of real property. R.S. 54:3-18; N.J.S.A. 54:2-37. Mr. Morrison, attorney for Ridgefield Park, appeared at this hearing. The chairman of the County Board of Taxation, appellee, Louis A. D'Agosto, presided. Appellee, Green, a member of the Board, also participated in the interrogation.

Ridgefield Park claims that its real property aggregates should have been equalized on the basis of the State sales sample data.[9] This would have produced a ratio of 107% (61 N. J. Super. at 214; Appellants' Appendix B, 69a). The 1959 equalization ratio fixed for Ridgefield Park was 100%. On this basis the overpayment claimed by Ridgefield Park can be accurately computed. It amounts to approximately $10,000. It is not impossible to calculate this amount and there is no difficulty in proof. But the denial of the adjustment to Ridgefield Park in this regard was based upon the fact that there was an adequate administrative remedy which Ridgefield Park failed to pursue. *See*: Point III, *infra*. The refusal to grant this credit was not based upon any federal ground. Nevertheless, the substantive claim will be considered here.

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[9] This is the same data used by the Director of the Division of Taxation in the promulgation of a table of equalized valuations used for school aid distribution under N.J.S.A. 54:1-35.1 *et seq.* *See*: *Bayonne* v. *Division of Tax Appeals*, 49 N. J. Super. 230, 234, 235 (App. Div. 1958), for a description of the method.

The Bergen County Board of Taxation fixed Ridgefield Park's ratio at 100% on the basis of testimony and proof introduced by Ridgefield Park at such hearing. Excerpts from this testimony are contained in the Appendix hereto. The evidence showed that Ridgefield Park itself contended that it had assessed its property at 100% of true value. Mr. Fellgraff, who was the assessor of Ridgefield Park in 1958 so testified. Mr. Rake, a partner in the firm that performed the revaluation survey for Ridgefield Park, also testified that assessments were made at 100% of true value. He further testified that a spot check showed that the assessments actually approximated 100% of true value if tested by the sales study method. His testimony showed that a comparison of 88 sales between January 1, 1958 and June 30, 1958 with assessments as revalued showed a ratio of 101%. A comparison of 45 sales between October, 1958 and January 22, 1959 with revised assessments showed a ratio of 97% (Appellees' Appendix 4a).

The difference in results between the State sales studies used exclusively on a sample basis with assessments in Ridgefield Park as a whole, before the revaluation and after the revaluation, was called to the attention of the assessor during the equalization hearing. He was asked to explain the difference in results. The colloquy is as follows (Appellees' Appendix 6a, 7a):

> "Mr. Green: Will you explain to me, as a member of the Board, why that increase in true value—not in assessed value but true value based on the State formula as submitted of 21.86 on the preliminary table?
>
> "Mr. Fellgraff: I am not able to answer that, Mr. Green, because that is the State formula which was derived in the conventional way and which I assumed is correct and accurate but remember that the formula is a spot check and to my knowledge, Ridgefield Park had not had a complete revaluation in, I will say, approximately 50 years.

"I think it is natural that a careful precise revaluation with current market values as its base, unfortunately, indicates this *and its cost Ridgefield Park more in County taxes but it is truthful to* the best of our ability." (Emphasis added)

No substantial federal question is raised by the determination of the Bergen County Board of Taxation in accepting this proof and in fixing the equalization ratio for Ridgefield Park at 100%.

B. As to the Formula for Apportioning the County Tax Burden.

We contend that Federal constitutional law permits a state to apportion county taxes among municipalities of the county upon any reasonable mode. For example, it could be based upon real property aggregates alone, notwithstanding that personal property is also subject to taxation. Federal law does not require that the apportionment of county taxes be made by comparing the true value of all real and personal property in a municipality with the true value of all taxable property in the county. For example, if a state legislature desires to prefer industrial municipalities, where the value of tangible personal property is high because of industrial equipment and machinery, an apportionment could be made based upon municipal real property aggregates alone. If a state desires to favor residential communities, it may exempt household goods and personal effects from taxation. This would shift the burden to industrial communities where all business machinery and equipment, inventories and other commercial tangible property would be assessed. In residential communities, with household goods and personal effects exempt from taxation, the bulk of taxable property would be real property, there being little industrial equipment. But by what Federal rule is a state legislature prohibited from using such standards in apportioning taxes? We know of no such rule. The apportionment of county taxes need not be made on the basis of the ability to pay or the true worth of all property in the respective communities.

Where there is a property tax on real and personal property, can a state apportion a tax, such as a county tax, on the basis of real property valuations alone—or on the basis of population in each municipality compared with the population of the county—or on the basis on incomes of residents as reported for federal income tax purposes? If the state can demonstrate some reasonable basis for the apportionment formula, no federal inhibition should be applied.

In *Hagar* v. *Reclamation Dist. No. 108,* 111 U. S. 701, 705 (1884) this Court held that taxes to be raised for defraying the cost of reclaiming swamp lands could be apportioned by the legislature of California "in some just and reasonable mode," by approximation and not with absolute equality. The Court there said:

> "All that is required in such cases is that the charges shall be apportioned in some just and reasonable mode, according to the benefit received. Absolute equality in imposing them may not be reached; only an approximation to it may be attainable. If no direct and invidious discrimination in favor of certain persons to the prejudice of others be made, it is not a valid objection to the mode pursued that, to some extent, inequalities may arise. It may possibly be that in some portions of the country there are overflowed lands of so large an extent that the expense of their reclamation should properly be borne by the State. But this is a matter purely of legislative discretion. Whenever a local improvement is authorized, it is for the legislature to prescribe the way in which the means to meet its cost shall be raised, whether by general taxation, or by laying the burden upon the district specially benefitted by the expenditure. *County of Mobile* v. *Kimball,* 102 U. S. 691, 704. The rule of equality and uniformity, prescribed in cases of taxation for State and county purposes, does not require

that all property, or all persons in a county or district, shall be taxed for local purposes. Such an application of the rule would often produce the very inequality it was designed to prevent."

The inability to equalize personal property aggregates in an administrative process has been recognized by the Legislature and the Supreme Court of New Jersey. An equalization process is feasible as to real property because of the nature of the property and the availability of sales and appraisal data. For these reasons the New Jersey Supreme Court held in the 1960 *Passaic* case, *supra* (Appellants' Appendix C, 98a, 99a):

> "Under existing circumstances, there is nothing arbitrary or invidious in providing for equalization of the aggregates of real property while omitting similar treatment of the aggregates of personal property.
>
> * * *
>
> "* * * The Legislature need not refrain from achieving a measure of equality where it can merely because its technique is not serviceable throughout the apportionment basis. Absolute equality in taxation is a practical impossibility. * * * As we have said, the inequality of which the city complains is not the product of the statute. Rather it is the product of the failure of assessors to comply with the legislative mandate."

To cure inequality in the future as far as possible the New Jersey Supreme Court has afforded the remedy of a court order directed to assessors to comply with statutory standards. But in the *Passaic* case, *supra*, the Court expressly upheld the constitutionality of the apportionment formula, without reference to the allowance of a credit to a complaining municipality.

None of the federal cases cited by appellants require a contrary result. In fact, none of the cases deal with the

problems of apportioning a general tax among different taxing districts. They concern discriminatory assessments or taxes levied against taxpayers of the same taxing district. Nor has the imposition of an excessive tax burden compelled the remedy of tax exoneration; the only relief to which a taxpayer is entitled is equal tax treatment, a reduction of taxes to the level of others of the same class, or an increase of taxes of others to the same level of the complainant.

If property which is subject to taxation became exempt because an excessive tax has been imposed, the exemption thereby created would shift an excessive burden to the other taxpayers. Therefore, to cure appellants' complaint in the fashion they suggest is to create unfair, overtaxation of other taxpayers. Neither logic nor any known rule of law requires such a remedy.

Appellants cite *Carpenter* v. *Shaw*, 280 U. S. 363 (1930). This case deals with a tax exemption accorded by statute to land owned by Choctaw Indians. The court held that royalties paid to the Indians on oil taken from the land were also entitled to the tax exemption because the interest is so closely associated with the enjoyment of the land itself. *Ward* v. *Love County*, 253 U. S. 17 (1920) also deals with the tax exemption of Indian lands and is equally inapplicable to the case at bar.

Appellants cite *Iowa-Des Moines Nat. Bank* v. *Bennett*, *supra*. This case dealt with unfair taxation of a national bank in favor of competing state banks. The Court held that the remedy is inadequate if the national bank could get no relief except by seeking to compel state officials to obtain the full tax payable from State banks. A remedy is adequate, however, if the excessive portion of the tax is removed from the complaining taxpayer. But nowhere does the court suggest that the federal constitution requires a form of relief from discrimination by voiding the tax in

its entirety. Similarly, in *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U. S. 673, 678 (1930) the Court held that a taxpayer who is overassessed by 25% has a federal constitutional right "to have the assessments abated by 25%."

In *Hillsborough Township v. Cromwell*, 326 U. S. 620, 627 (1946) a taxpayer, Doris Duke Cromwell, was subjected to assessments on intangible personal property in amounts exceeding $220,000,000 in each of two years. The assessments were set aside by the District Court and the Circuit Court of Appeals. Neither court decided the case on federal grounds. The assessment was set aside because it was not made in conformity with the statute. The case was decided on the basis of state law.

In the case at bar appellants claim that property which is taxable and which was duly taxed should escape the fair share of the tax burden because of inadequate valuations on other property. In *Appeal of N. Y. State Realty Terminal Co.*, 21 N. J. 90, 96 (1956) it was said:

> "Taxes are the life blood of government and no taxpayer should be permitted to escape the payment of his just share of the burden of contributing thereto. *P. J. Ritter Co. v Mayor of City of Bridgeton*, 135 N. J. L. 22 (Sup. Ct. 1946), affirmed 137 N. J. L. 279 (E. & A. 1948); *Ridgewood Elks Holding Corp. v. Village of Ridgewood*, 127 N. J. L. 295 (E. & A. 1941); *Haddon Hills Apartments North v. Haddon Township*, 31 N. J. Super. 124 (App. Div. 1954); cf. R.S. 54:4-58. Any procedure which would permit avoidance of such taxes when a substantial basis therefor exists is inequitable."

See also: *Ridgewood Elks Holding Corp. v. Village of Ridgewood*, 127 N. J. L. 295, 298 (E. & A. 1941) where it was held that assessments shall not be voided for irregularities if the property is, in fact, taxable. This policy is expressed in N.J.S.A. 54:2-37 which provides for the review

of a county equalization table in the Division of Tax Appeals "but such review shall not suspend the apportionment of moneys or collection of taxes. * * * The difference shall be debited or credited, as the case may be, to each taxing district on account of its share of State and county taxes next due or distributable, as the case may be."[10]

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[10] The same policy is expressed in N.J.S.A. 54:4-49(c), (debits or credits resulting from increases or decreases in the amount of assessments after the apportionment in the preceding year or years by reason of final judgments on appeals, complaints and applications, etc.), N.J.S.A. 54:4-53 (correction of clerical errors to be debited or credited in the following year), as well as in R.S. 54:4-58 and R.S. 54:4-59. These latter two statutes are as follows:

"54:4-58. Tax, assessment or water rate not set aside for irregularities or illegality

No tax, assessment or water rate imposed or levied in this state shall be set aside or reversed in any action, suit or proceeding for any irregularity or defect in form, or illegality in assessing, laying or levying any such tax, assessment or water rate, or in the proceeding for its collection if the person against whom or the property upon which it is assessed or laid is, in fact, liable to taxation, assessment or imposition of the water rate, in respect to the purposes for which the tax, assessment or rate is levied, assessed or laid."

"54:4-59. Court to amend and fix amount due

The court in which any action, suit or proceeding is or shall be pending to review any such tax, assessment or water rate shall amend all irregularities, errors or defects, and may if necessary ascertain and determine the sum for which the person or property was legally liable and by order or decree fix the amount thereof. The sum so fixed shall be the amount of tax, assessment or water rate for which the person or property shall be liable."

See also: N.J.S.A. 54:4-61 and N.J.S.A. 54:4-62. N.J.S.A. 54:4-62 provides as follows:

"If it shall appear to the satisfaction of the Superior Court, in a proceeding in lieu of prerogative writ, that an assessment

(Continued on following page)

Thus the public policy of New Jersey requires the payment of taxes by owners of property subject to tax. To accept appellants' view would penalize taxpayers of other municipalities who have no control over the assessing practices, who do not make the assessments, and who, in fact, themselves may be subjected to excessive taxes due to the lack of uniformity in intramunicipal assessments.

The Supreme Court of New Jersey has vigorously advanced the cause of uniform assessments. It has an intimate knowledgeof the problem, its causes, difficulties and its remedies. Litigation is an added expense to the burdened taxpayer. Revaluation cannot be secured by individual appeals in the tax tribunals. But revaluation is the first step toward fair tax treatment, by attaining good assessments in the first instance. Toward this end the Supreme Court has afforded the remedy in *Switz*, within a single municipality, and has extended that remedy in *Ridgefield Park*, the case at bar, on a county-wide basis. We can perceive no substantial grounds for calling in the United States Supreme Court to compel the remedy proposed by appellants. We know of no other municipality that has sought such preferential treatment, the total abatement of a tax, because other taxpayers have been underassessed. Equal treatment is the taxpayer's due, not preferential treatment. "The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the same level of his own." *Hillsborough*, case, *supra*, at 623.

(*Continued from preceding page*)

of taxes reviewed thereby is at a rate higher than authorized by the law or resolution authorizing the assessment, or that the value of taxable property for which a person is therein assessed, is too great, the court shall amend the assessment and reduce it to the proper and just amount, and thereupon affirm it according to the amendment and reduction and reverse it as to the excess only."

We contend that there is no substantial federal question raised by appellants' demand for a remedy that requires the total abatement of Ridgefield Park's share of the County tax burden.

POINT III

The decision of the New Jersey Supreme Court rests upon an adequate non-federal basis.

Where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, this Court lacks jurisdiction if the non-federal ground is independent of the federal ground and is adequate to support the judgment. *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935); *Enterprise Irrigation District* v. *Canal Co.*, 243 U. S. 157, 163-165 (1917).

In the case at bar, several municipalities consistently urged that the action should be dismissed for failure of appellants to pursue available administrative remedies. "Any action or determination of a county board of taxation may be appealed for review to the Division of Tax Appeals in the State Department of Taxation and Finance * * *." N.J.S.A. 54:2-35. The right of review before the Division of Tax Appeals includes a review of the county tax apportionment as well as the aggregate apportionment valuations. This was the procedure followed by the City of Passaic in the 1960 *Passaic* case, *supra*. (Appellants' Appendix C. 94a). *See* also: *Totowa* case, *supra*, 5 N. J. at 459.

N.J.S.A. 54:2-37 expressly provides for the review of a county equalization table by the county board of taxation. N.J.S.A. 54:2-39 provides for a further appeal to the Division of Tax Appeals for any appellant who is dissatisfied with the judgment of the county board of taxation.

We know of no exception to the rule requiring the exhaustion of review procedures before the administrative agencies on a complaint concerning a county equalization table. All the reported cases in New Jersey on equalization table disputes have come to the courts through the Division of Tax Appeals. *See: Kearny* v. *Division of Tax Appeals*, 61 N. J. Super. 438 (App. Div. 1960); *Bayonne* v. *Division of Tax Appeals*, 49 N. J. Super. 230 (App. Div. 1958); *Borough of Carteret* v. *Division of Tax Appeals*, 40 N. J. Super. 439 (App. Div. 1956).

The complaint as to the table of equalization in this case is that the ratio fixed for Ridgefield Park was at 100% rather than 107%. This was an issue that could have been reviewed in the normal way by administrative review in the Division of Tax Appeals pursuant to N.J.S.A. 54:2-37. For this reason, we contended on the first appeal to the New Jersey Supreme Court that there was an adequate administrative remedy. No reason has been advanced by Ridgefield Park for failing to exhaust that remedy. If necessary, a further appeal could have been taken to the Appellate Division of the Superior Court of New Jersey from the decision of the Division of Tax Appeals. R.R. 4:88-8.

After denying the right to attack the equalization table in these proceedings, the New Jersey Supreme Court stated (31 N. J. at 428; Appellants' Appendix A, 5a) "The reason is not the adequacy of the administrative review to reach the basic vice of unequal assessments of the underlying *individual* properties." (Emphasis added) But the equalization ratio of *aggregate* real property assessments can be reviewed adequately in an administrative proceeding. The basis for Ridgefield Park's claim, namely, that its ratio should have been 107% rather than 100%, did not appear in the generalized pleadings of its complaint and therefore was not apparent to the New Jersey Supreme Court on the first appeal.

These circumstances were brought to the attention of the New Jersey Supreme Court on the second appeal. There, in its opinion of June 28, 1960, the Supreme Court held as follows (Appellants' Appendix A, 15a):

> "To recapitulate, the equalization table for 1959 and the apportionment of the county tax for that year could be reviewed as such only in the administrative process; and with respect to a claimed inequity for the year 1959 which was beyond relief by way of administrative review, Ridgefield Park can at most seek a credit against a future apportionment in such amount as it shows to be in excess of the share it would have owed if the statutory provisions had been honored by the local assessors within the county."

Clearly, then, review of the real property equalization table could be had in the administrative agency and review of the county tax apportionment to the extent that it is affected by the equalization ratio could likewise be reviewed in the administrative agency. We have contended below that the state administrative tax agencies, the County Boards of Taxation and the Division of Tax Appeals, have no duty or power to "equalize" personal property assessments in the county tax apportionment process. However, if there is a constitutional requirement that relief be given by way of a credit or other adjustment, including setting aside the tax in its entirety, the power to grant the credit or take other necessary action may just as well reside in the administrative agency as in the courts. *See*: *Gibraltar* case, *supra*.

In so far as appellants complain of error in the real property equalization ratio fixed for Ridgefield Park, it is clear that appellants were barred from relief by the court below on the ground that they failed to pursue an available administrative review. This determination disposes of appellants' claim upon an adequate, independent, non-federal basis.

CONCLUSION

It is respectfully submitted that the appeal be dismissed on the grounds that the judgment below lacks finality, the appeal does not raise a substantial federal question and the decision of the court below rests upon an adequate non-federal basis.

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Dated: February 24, 1961.

[APPENDIX FOLLOWS]

APPENDIX

Excerpts from Hearing on the 1959 Equalization Table before the Bergen County Board of Taxation, February 18, 1959

(Transcript of hearing at p. 55)

(Mr. Floyd Rake, Jr., Real Estate Expert from Associated Surveys, took the witness stand,)

By Mr. Morrison:

Q. Mr. Rake, what is your full name? A. Floyd Rake, Jr.

Q. Where do you live, sir? A. Ridgewood, New Jersey.

Q. By whom are you employed, sir? A. I am a partner in Associated Surveys.

Q. What is that business? A. We specialize in tax revaluation for tax equalization purposes.

Q. What was your formal education insofar it concerns the college level? A. I am a graduate of the University of New Mexico.

Q. What was your degree? A. Bachelor of Science.

Q. After your graduation from college, were you employed? A. Yes.

Q. Who were you employed by? A. By the J. M. Clemenshaw firm.

Q. What is their business? A. They also specialize in revaluations.

Q. For how long a period did you work with J. M. Clemenshaw in the reappraisal business? A. Approximately 7 years.

Q. And you are now employed by whom? A. Associated Surveys.

Q. How long have you been employed by Associated Surveys? A. Approximately five years.

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Q. And their business, as I understand it from your former testimony, is the reappraisal and revaluation of real estate and properties, is that correct? A. Yes.

Q. Did your concern enter into a contract with the Village of Ridgefield Park for the revaluation of its real estate improvements in addition to other things? A. Yes.

Q. When did you enter into that contract, approximately? A. Approximately April of 1958.

Q. After the entry into the contract for the revaluation of Ridgefield Park, will you tell us what you did, the method by which you revalued the properties in Ridgefield Park in some detail, please? A. Well, the first item in the preparation to start the project was to type or to Addressograph each line item of property that existed in the Village of Ridgefield Park. These cards in turn were set out by map and block number and then taken into the field and each property was investigated.

All buildings were measured and the buildings were in turn listed as to their component parts by an interior inspection. A depreciation factor was then applied for its age and condition and if any further depreciation was allowed, it was therefore warranted in the form of what is known as a functional depreciation for obsolescence or utility value.

The land was then established through consultations with bankers, realtors and other reputable people within the Village of Ridgefield Park and land values were established by a front foot method.

These were then applied to the building values which we arrived at a fair market value of land and building.

Q. During the course of your revaluation of the properties in Ridgefield Park, was each and every lot and building inspected? A. Yes.

Excerpts from Hearing on the 1959 Equalization Table before the Bergen County Board of Taxation, February 18, 1959

Q. And did your firm and your personnel, in reaching your valuations, use the State Manual for valuations? A. Yes, sir. We did use the New Jersey State Appraisers Manual as a guide as to replacement construction cost of each structure.

Q. Were you obliged or did you make any variation in the State Manual formulas? A. Yes. We used an area cost factor through an investigation of local buildings and costs within the area.

Q. That is the only variation you used? A. Yes.

Q. Now as a result of your investigation and viewing of the properties in Ridgefield Park and your revaluation of the same, were final cards prepared for each property? A. Yes, sir.

Q. During the course of your revaluation program, did you make a comparison of your valuations with the State's samples' sales for the period ending June 30, 1958? A. We used, during the course of the project, a three-year study of the State's sales. That was all sales up to and including June 30th and dates after that.

Q. Now, sir, after your comparison of your valuations of the properties within the Village of Ridgefield Park with the State's samples sales, how did your valuations compare with the State's samples sales? A. Well, I don't have the complete list of samples sales before January 1958 with me.

The Chairman: Do you mean before January 1958?

Mr. Rake: Yes, sir. The sales prior to January 1st were used in a study.

The Chairman: Are we talking about January 1958 or January 1, 1959?

Mr. Rake: 1958. From January 1, 1958, to June 30, 1958.

Mr. Morrison: Using those sales as a basis of comparison to the evaluations as found by you as a result

of your physical inspection of the properties, what is that comparison?

Mr. Rake: Of the 88 sales that took place within that period of three classes of properties, 101% average ratio.

Mr. Green: Your valuation is 101% over the State valuation?

Mr. Rake: Of the indicated or reflected.

Mr. Green: True value by their formula of the ratio?

Mr. Rake: Yes, sir. There was no thorough investigation of any sales that might possibly not be used in the State. We took all.

Mr. Morrison: Now, sir, at my request, did you make a comparison of your valuations of the properties in Ridgefield Park with the sales that took place of properties within the Village of Ridgefield Park and after June 30, 1958?

Mr. Rake: Yes, from October 1958 to January 22, 1959.

Mr. Green: What does that ratio show?

Mr. Rake: 97% on 45 sales.

Mr. Green: In other words, he took the sales up to date, practically.

The Chairman: Go ahead.

Mr. Morrison: Now, sir, after the completion of your cards and information sheets, were they turned over to the municipal assessor?

Mr. Rake: Yes, sir.

Mr. Morrison: I have nothing further on direct, sir.

The Chairman: When did this program begin?

Mr. Rake: Approximately May of 1958 and it was completed during the month of October 1958.

The Chairman: These cards that you prepared, what do you call them?

Excerpts from Hearing on the 1959 Equalization Table before the Bergen County Board of Taxation, February 18, 1959

Mr. Rake: Property record cards.

The Chairman: Do you have a property record card for each piece of property in the village?

Mr. Rake: Yes, sir.

The Chairman: And you turned all of those over to the assessor?

Mr. Rake: Yes, sir.

The Chairman: How many did they aggregate?

Mr. Rake: Approximately 3,100.

The Chairman: 3,100 cards?

Mr. Rake: Somewhere in that neighborhood, of real property.

* * *

(Transcript of hearing at p. 66)

(Mr. L. F. Fellgraff, Assessor, took the witness stand.)

By Mr. Morrison:

Q. Mr. Fellgraff, where do you live? A. Ridgefield Park.

Q. Are you the assessor for the Village of Ridgefield Park? A. Yes.

Q. You have been for how many years? A. Approximately 15 years.

Q. And, sir, during the past year, did the Village of Ridgefield Park enter into a revaluation program for the ratables in the Village of Ridgefield Park? A. Yes, sir.

Q. And as a result of that revaluation program, were you supplied with a series of property cards on each and every lot and house in the Village of Ridgefield Park? A. I was.

Q. Did you work with the reappraising firm in the reaching of the conclusions as to true values of the various and

Excerpts from Hearing on the 1959 Equalization Table, before the Bergen County Board of Taxation, February 18, 1959

sundry properties in the Village of Ridgefield Park? A. I did.

Q. Now, when the final and completed cards were turned over to you, did you make up your assessment for the Village of Ridgefield Park? A. I did.

Q. And what was the amount of the total assessed valuation for real estate and improvements in the Village of Ridgefield Park? A. $57,495,190.

Q. What percentage of that valuation did you use for the purpose of assessment? A. The full value.

Mr. Green: 100%?

Mr. Fellgraff: Yes.

Mr. Green: In other words that is the ratio you are using in Ridgefield Park for 1959?

Mr. Fellgraff: Yes.

Mr. Green: Mr. Fellgraff, I want to bring out a point here. In 1958, you showed an assessed value of real property of $10,680,107 and the preliminary table for that year shows $49,040,743, and according to your 100% value as produced by the revaluation program, there has been an increase in true value over the last year of almost eight or nine million dollars.

Mr. Fellgraff: Are you talking about land and buildings?

Mr. Green: Land and buildings, an increase of almost $9 million over last year as true value.

Mr. Fellgraff: That's right.

Mr. Green: Will you explain to me, as a member of the Board, why that increase in true value—not in assessed value but true value based on the State formula as submitted of 21.86 on the preliminary table?

Mr. Fellgraff: I am not able to answer that, Mr. Green, because that is the State formula which was

derived in the conventional way and which I assumed is correct and accurate but remember that the formula is a spot check and to my knowledge, Ridgefield Park had not had a complete revaluation in, I will say, approximately 50 years.

I think it is natural that a careful precise revaluation with current market values as its base, unfortunately, indicates this and it cost Ridgefield Park more in County taxes but it is truthful to the best of our ability.

Mr. Green: In other words, after examining the records—and you had some control of this revaluation program since they used your records and everything else prior to your examination and you examined these records and had knowledge of many of the properties in Ridgefield Park—you are willing to state for the record that it is your opinion that the revaluation program according to the records which you produced shows $57,495,190 as the true value of all the real property in Ridgefield Park?

Mr. Fellgraff: That is true, I do.

Mr. Green: And further to state that you are using that figure which represented 100% and you are using now 100% of true value for your assessed valuation in Ridgefield Park?

Mr. Fellgraff: Right.

Mr. Morrison: That's all I have.

The Chairman: Let me get this straight. Your testimony is that $57,495,190 is the true value of all real property in the Village of Ridgefield Park?

Mr. Fellgraff: Right.

The Chairman: It represent 100%?

Mr. Fellgraff: Right.

Excerpts from Hearing on the 1959 Equalization Table before the Bergen County Board of Taxation, February 18, 1959

Mr. Green: I will go back to this. On the recent sales from October 21 to January 22, what did the comparison of those recent sales show against your valuation, what percentage?

Mr. Rake: October 1 to January 22, 97%.

Mr. Green: Up to June 30, it showed what?

Mr. Rake: 101%.

Mr. Green: That is all the sales?

Mr. Rake: I would say there might have been 2 or 3 sales out of that 88 sales that took place that we knew that weren't.

The Chairman: Anything else?

Mr. Morrison: No, sir.

The Chairman: Decision reserved.